IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 54 of 2001

Between:

B.V.S.S.S. Prakash Rao S/o Veeranna
R/o Stree Samajam Road, Tanuku,
West Godavari District.

..... PETITIONER

AND

The Commissioner, Tanuku Municipality
Tanuku, West Godavari District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction, preferably one in the nature of *Writ of Mandamus*, declaring the impugned Final Notice in Roc. No.226/98-27/B.O.I., dated 16-12-2000, issued by the respondent demanding a sum of Rs. 1,64,444/- from the petitioner towards the fee for regularisation of alleged unauthorised constructions of building in Stree Samaj Road, Ward No. 37 of Tanuku Municipality belonging to the petitioner as illegal, arbitrary, exorbitant, irregular and contrary to law; and consequently direct the respondent herein to drop further action in pursuance of the said impugned Notice.

Counsel for the Petitioner: MR.J.KANAKAIAH

Counsel for the Respondent: MR.S.NAGESWARA REDDY

The Court made the following:

ORDER:

For declaring the action of the respondent in issuing the impugned final notice in Roc.No.226/98-27/B.O.I., dated 16.12.2000 demanding a sum of Rs.1,64,444/- from the petitioner towards the fee for regularization of alleged unauthorized construction of the building in Stree Samaj Road, Ward No.37 of Tanuku Municipality belonging to the petitioner, as illegal, arbitrary and exorbitant, the present writ petition has been filed.

2. It is the case of the petitioner that he is the absolute owner of house plot admeasuring 420 square yards situated in Stree Samaj Road, Tanuku having purchased the same long back and he applied for grant of permission for construction while paying the requisite fee of Rs.1,592/- along with proposed plan in the year 1998 and the permission was granted to the petitioner and the petitioner paid the development charges amounting Rs.23,160/- on 25.03.1998. According to the sanctioned plan, he proceeded with the construction and the construction work was completed in the year 1998. It is further contended that the ground floor is being used as godown for his convenience to store his agricultural produce and the first floor is meant for residential purpose. Subsequent thereto, the respondent took an objection that using the ground floor as a godown, which is a commercial usage, as such, he is liable to pay the fee at the rate of Rs.75/- per square feet treating the same as commercial purpose and the said house building is in residential locality and no trade or commercial transaction takes place and as such, he is not liable to pay the said amount. It is further contended that the respondent issued another notice vide Roc.No.226/98-27/B.O.I., dated 16.12.2000 as per the Building Regularization Scheme under G.O.Ms.No.419, M.A. dated 30.07.1998 alleging that his house is being considered as a commercial construction and he is liable to pay the regularization fee at the rate of Rs.75/- per square feet and calculated the total amount of alleged deviation as Rs.1,64,444/-. Challenging the said order, the present writ petition has been filed.

3 . On the other hand, the respondent filed its counter denying all the allegations. It is stated in the counter that the petitioner was granted permission for construction of residential building of Ground plus First floor with RCC roof after collecting the requisite fee at Rs.23,160/- towards betterment charges

since the said site is falls under approved lay out and after obtaining permission for construction of a residential building, the petitioner violated the building rules and zoning regulations and constructed ground floor purely for commercial purpose. The petitioner has constructed RCC roof building in ground floor and utilizing the same purely for commercial purpose as Hero Honda Show Room, as such, the penal amount @ Rs.75/- per square feet was imposed. After knowing of G.O.Ms.No.419, dated 30.07.1998 the petitioner approached the respondent and submitted Form-A along with Rs.50/- vide challan No.2344, dated 11.09.1998, but he was not complied with the guidelines issued in the said G.O. It is further contended that after calculating the penal amount, this respondent has issued the final notice vide Roc.No.286/98.G1/BO-I, dated 16.12.2000 and the same was served on the petitioner on 29.12.2000 directing him to pay the penal amount within 3 days, failing which the unauthorized constructions would be demolished. It is further contended that the petitioner made constructions by deviating the sanctioned plan and constructed the building by violating the zoning regulations and building rules and converted the ground floor for commercial purpose with shop rooms, and therefore, the writ petition is liable to be dismissed.

4. Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondent.

5. I have gone through the entire material available on record. As seen from the impugned notice, it appears that the petitioner was directed to pay an amount of Rs.1,64,444/- for regularization of unauthorized constructions along with “B” form within three days, otherwise the unauthorized constructions would be demolished at any time. Further, except mentioning the G.O.Ms.No.419, dated 30.07.1998 no other particulars have been mentioned therein. Hence, I am of the considered view that the impugned notice is in utter violation of the principles of natural justice, and therefore, the same is liable to be set aside.

6. Accordingly, the writ petition is allowed. However, the respondent, after affording an opportunity of hearing to the petitioner and after considering his

submission, is at liberty to calculate the amount for regularization of the unauthorized constructions made by the petitioner as per the instructions given by the Government in G.O.Ms.No.419, dated 30.07.1998 and collect the same from the petitioner. No order as to costs.

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(ELIPE DHARMA RAO, J)

Date: 21.07.2005

Ksn

This Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki , the Acting Chief Justice on this the 21st day of July, Two thousand and five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Tanuku Municipality
Tanuku, West Godavari District.

2. 2 CD copies

*Form-NIC-OGS/WP{**SRAVAN**}*